

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

Case 4:20-cv-04192-LLP

DAKOTA ENERGY COOPERATIVE, INC., )  
)  
Plaintiff/ )  
Counter-Claim Defendant, )  
)  
v. )  
)  
EAST RIVER ELECTRIC POWER )  
COOPERATIVE, INC., )  
)  
Defendant/ )  
Counter-Claim Plaintiff/ )  
Cross-Claim Defendant, )  
)  
and )  
)  
BASIN ELECTRIC POWER COOPERATIVE, )  
)  
Intervenor-Defendant/ )  
Counter-Claim Plaintiff/ )  
Cross-Claim Plaintiff. )

VIDEOCONFERENCE

DEPOSITION

OF

**DAVID RAATZ,**

**on behalf of BASIN ELECTRIC POWER COOPERATIVE**

September 23, 2021

9:12 a.m.

LOCATION:

All parties appearing via Zoom.

REPORTER: CAROLYN TAYLOR PEKAS, RPR

<p style="text-align: right;">74</p> <p>1 Energy's request to withdraw from East River?</p> <p>2 MR. ORR: Object to form.</p> <p>3 MR. DIRENFELD: Same objection.</p> <p>4 A. I'd have to go back in to review the</p> <p>5 resolutions.</p> <p>6 Q. (BY MR. JASILLI) Is there any board</p> <p>7 resolution that Basin contends governs East River's</p> <p>8 response to Dakota Energy's request to buy out of its</p> <p>9 wholesale power contract with East River?</p> <p>10 MR. DIRENFELD: Object to form.</p> <p>11 MR. ORR: Object to form.</p> <p>12 A. I believe there are -- there's at least one</p> <p>13 board resolution that pertains to a member exiting</p> <p>14 and -- you know, from membership, and providing</p> <p>15 buyout numbers.</p> <p>16 Q. (BY MR. JASILLI) Have you ever seen that</p> <p>17 resolution?</p> <p>18 A. Yes, I have.</p> <p>19 Q. When did you see it?</p> <p>20 A. When it was being developed and in</p> <p>21 preparation for discussions today.</p> <p>22 Q. Do you recall any specifics about that</p> <p>23 resolution?</p> <p>24 MR. DIRENFELD: And I'm just going to -- on</p> <p>25 this note, referring to the, at least, portion where</p>	<p style="text-align: right;">76</p> <p>1 Q. What is this document?</p> <p>2 A. It's the -- a board resolution outlining --</p> <p>3 where the board indicates the board has considered</p> <p>4 the request of a Class A member and the advice of</p> <p>5 counsel and concluded that it is not in the best</p> <p>6 interests of the cooperative or the membership to</p> <p>7 allow any buyout of the all-requirements contracts</p> <p>8 with the cooperative or any of the Class A members.</p> <p>9 Q. Is it Basin's position that this board</p> <p>10 resolution creates any obligations for its Class A</p> <p>11 members?</p> <p>12 MR. DIRENFELD: Object to form.</p> <p>13 A. I think this resolution, as it states in the</p> <p>14 third whereas clause of the resolution, where it</p> <p>15 indicates, basically, the all-requirements contracts</p> <p>16 between both the Class A members of the cooperative</p> <p>17 and the Class C members of the Class A members do not</p> <p>18 contain any provisions permitting the member to buy</p> <p>19 out of the all-requirements contract, that the</p> <p>20 cooperative or the Class A member is applicable.</p> <p>21 Q. (BY MR. JASILLI) So is this resolution</p> <p>22 directing Class A members not to allow buyouts of the</p> <p>23 all-requirements contracts?</p> <p>24 A. I think it's reflecting the terms of the</p> <p>25 existing contracts and a reiteration of what those</p>
<p style="text-align: right;">75</p> <p>1 he talks -- Dave was referring to the development of</p> <p>2 the resolution, I'll counsel him not to reveal any</p> <p>3 conversations with legal counsel or conversations</p> <p>4 that may have occurred in executive session of the</p> <p>5 board with legal counsel.</p> <p>6 A. So the resolution basically said with the</p> <p>7 advice of legal counsel, the board did not feel it's</p> <p>8 appropriate to provide a buyout number, in essence.</p> <p>9 Q. (BY MR. JASILLI) Is it Basin's position</p> <p>10 that that resolution is binding on East River?</p> <p>11 MR. DIRENFELD: Object to form.</p> <p>12 MR. ORR: Object to form.</p> <p>13 A. I believe that resolution is referencing</p> <p>14 what the board believes is an appropriate</p> <p>15 interpretation of some of the all-requirements</p> <p>16 arrangements between the parties.</p> <p>17 Q. (BY MR. JASILLI) Can you go to Tab 14,</p> <p>18 please?</p> <p>19 MR. JASILLI: And I'm going to mark this as</p> <p>20 Exhibit 3.</p> <p>21 (Deposition Exhibit Number 3 marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. JASILLI) Mr. Raatz, do you</p> <p>24 recognize this document?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">77</p> <p>1 terms are.</p> <p>2 Q. So this is Basin telling its Class A members</p> <p>3 what their wholesale power contracts mean with their</p> <p>4 Class C members; right?</p> <p>5 A. Basin's interpretation of what those</p> <p>6 contracts say.</p> <p>7 Q. And Basin is telling its Class A members</p> <p>8 that their wholesale power contracts do not allow</p> <p>9 buyouts; is that right?</p> <p>10 MR. DIRENFELD: Object to form.</p> <p>11 A. I think it's laying out what Basin's</p> <p>12 interpretation is, and it's providing that</p> <p>13 interpretation to its members, where they have</p> <p>14 directed the CEO to furnish a copy of the resolution</p> <p>15 to the Class A members of the cooperative who are</p> <p>16 making the statement that this is our interpretation.</p> <p>17 Q. (BY MR. JASILLI) And Basin's interpretation</p> <p>18 of the Class A members' wholesale power contracts is</p> <p>19 that they do not allow buyouts; right?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Is that --</p> <p>22 A. Yes, that's what it says.</p> <p>23 Q. And is Basin directing its Class A members</p> <p>24 to follow Basin's interpretation of those contracts?</p> <p>25 MR. DIRENFELD: Object to form.</p>

<p style="text-align: right;">86</p> <p>1 talking objections, please.</p> <p>2 MR. DIRENFELD: Yeah. I'm instructing the</p> <p>3 witness not to answer, so we'll move on. I've made</p> <p>4 an instruction.</p> <p>5 Q. (BY MR. JASILLI) So is there any factual</p> <p>6 basis for the interpretation that isn't privileged?</p> <p>7 MR. DIRENFELD: I don't quite understand</p> <p>8 what you mean by "factual basis."</p> <p>9 Q. (BY MR. JASILLI) Is there a factual basis</p> <p>10 for the interpretation that East -- of the wholesale</p> <p>11 power contracts that East River put in this</p> <p>12 resolution?</p> <p>13 A. The factual basis is the words of the</p> <p>14 all-requirements contract, the words of the bylaws.</p> <p>15 That's the factual information, the contracts and the</p> <p>16 bylaws.</p> <p>17 Q. So what Basin did here was take its</p> <p>18 counsel's interpretation of those words and put them</p> <p>19 in this resolution; right?</p> <p>20 MR. DIRENFELD: Objection. I'm going to</p> <p>21 instruct the witness not to answer because you --</p> <p>22 based on privileged communications.</p> <p>23 MR. JASILLI: Mr. Direnfeld, if Basin put</p> <p>24 the advice of its counsel directly in a resolution</p> <p>25 that it admits it expected to be widely distributed</p>	<p style="text-align: right;">88</p> <p>1 the advice of counsel into the resolution. The</p> <p>2 resolution speaks for itself.</p> <p>3 I'll also note that the witness was not</p> <p>4 designated and we objected to talking about the</p> <p>5 interpretation of the agreements. The witness gave</p> <p>6 you the factual basis, and we've objected and made an</p> <p>7 instruction on privilege, and we can now move on.</p> <p>8 Q. (BY MR. JASILLI) In the next whereas, it</p> <p>9 says, "As a result, neither the cooperative nor any</p> <p>10 Class A member has any obligation to develop,</p> <p>11 calculate, or furnish any information required in</p> <p>12 connection with the buyout or otherwise permit any</p> <p>13 such member to buy out of its all-requirements</p> <p>14 contract." Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. What is Basin's basis for that statement?</p> <p>17 MR. DIRENFELD: Again, the witness can speak</p> <p>18 to any factual basis, but do not -- do not -- do not</p> <p>19 reveal any privileged communications.</p> <p>20 A. I guess it's the -- Basin's opinion that the</p> <p>21 all-requirements contract be read in conjunction with</p> <p>22 the bylaws does not provide -- or has provisions for</p> <p>23 the withdrawal of membership, and you -- it's the</p> <p>24 board's interpretation or opinion that that cannot</p> <p>25 be -- a termination of the all-requirements contract</p>
<p style="text-align: right;">87</p> <p>1 amongst its membership, that advice is not</p> <p>2 privileged. They have waived that privilege.</p> <p>3 MR. DIRENFELD: We have not waived that</p> <p>4 privilege. I'm instructing the witness not to</p> <p>5 answer. Move on.</p> <p>6 MR. JASILLI: You're instructing the witness</p> <p>7 not to answer if the statement in this resolution is</p> <p>8 the advice of its counsel?</p> <p>9 MR. DIRENFELD: Yes.</p> <p>10 MR. JASILLI: If the statement is the advice</p> <p>11 of counsel, then the privilege was waived. You have</p> <p>12 to let your witness answer whether or not this</p> <p>13 statement is the advice of counsel.</p> <p>14 MR. DIRENFELD: I do not have to. I'm</p> <p>15 instructing him. We can move on. I've made my</p> <p>16 instruction.</p> <p>17 MR. JASILLI: All right. Well, I'm going to</p> <p>18 reserve on that topic as I have said the record</p> <p>19 indicates that Basin placed the advice of counsel</p> <p>20 directly into this resolution, and it is Dakota</p> <p>21 Energy's position that it would like to reserve the</p> <p>22 ability to raise that waiver of privilege with the</p> <p>23 Court at a later time.</p> <p>24 MR. DIRENFELD: Yeah, and I will state for</p> <p>25 the record that the witness did not say that he put</p>	<p style="text-align: right;">89</p> <p>1 is not provided for until the expiration of its</p> <p>2 contract.</p> <p>3 Q. (BY MR. JASILLI) When you said that it's</p> <p>4 the board's opinion, who specifically on the board</p> <p>5 came up with that opinion?</p> <p>6 A. It's the board in its whole. It's the</p> <p>7 board's opinion, the board's resolution.</p> <p>8 Q. And how did the board reach that opinion as</p> <p>9 a whole?</p> <p>10 MR. DIRENFELD: Objection. I'll instruct</p> <p>11 the witness not to answer to the extent it reveals</p> <p>12 any privileged communications with counsel.</p> <p>13 A. Again, it was discussed in executive session</p> <p>14 and under attorney-client privilege.</p> <p>15 Q. (BY MR. JASILLI) Did the board adopt the</p> <p>16 opinion or the advice of its counsel?</p> <p>17 MR. DIRENFELD: Objection. Again, I'm going</p> <p>18 to instruct the witness not to answer -- to reveal</p> <p>19 attorney-client privilege of conversations that</p> <p>20 occurred with attorneys in executive session. The</p> <p>21 resolution speaks for itself.</p> <p>22 Q. (BY MR. JASILLI) I'm just going to ask you</p> <p>23 point-blank, Mr. Raatz: Is this resolution -- are</p> <p>24 the words in this resolution the advice of Basin's</p> <p>25 counsel?</p>

<p style="text-align: right;">90</p> <p>1 MR. DIRENFELD: Objection. I'm going to</p> <p>2 instruct the witness not to answer again,</p> <p>3 Mr. Jasilli. Same -- same instruction. You're</p> <p>4 trying to get into privileged conversations.</p> <p>5 MR. JASILLI: I'm going to make the same</p> <p>6 reservation that I made previously, which is that if</p> <p>7 Basin placed the advice of its counsel directly into</p> <p>8 a document that it then shared with all of its</p> <p>9 Class A members and presumed would be shared with all</p> <p>10 of its Class C members, then the privilege is waived.</p> <p>11 MR. DIRENFELD: We disagree --</p> <p>12 MR. JASILLI: We reserve the right to raise</p> <p>13 that issue with the Court.</p> <p>14 MR. DIRENFELD: We disagree with that</p> <p>15 position, and we're happy to go ahead and raise it</p> <p>16 with the Court. You can move on.</p> <p>17 Q. (BY MR. JASILLI) So other than the words of</p> <p>18 the bylaws and the wholesale power contracts, is</p> <p>19 there any basis for the opinions in this resolution</p> <p>20 other than advice of counsel?</p> <p>21 A. All those issues were discussed in executive</p> <p>22 session and under attorney-client privilege.</p> <p>23 MR. DIRENFELD: I'll make my same</p> <p>24 instruction.</p> <p>25 MR. JASILLI: And I'll make the same</p>	<p style="text-align: right;">92</p> <p>1 communications, which were privileged, occurred in</p> <p>2 the context of a joint defense agreement, that joint</p> <p>3 defense agreement protects those privileges, and the</p> <p>4 witness should not testify about those</p> <p>5 communications.</p> <p>6 MR. DIRENFELD: I echo Mr. Orr's statement</p> <p>7 there.</p> <p>8 A. Those discussions did happen with legal</p> <p>9 counsel present.</p> <p>10 Q. (BY MR. JASILLI) Which legal counsel?</p> <p>11 MR. DIRENFELD: I'm going to -- at this</p> <p>12 point, now, I will object and instruct the witness</p> <p>13 not to answer. The witness has stated that they've</p> <p>14 taken place pursuant to joint defense agreements.</p> <p>15 MR. JASILLI: You're instructing your</p> <p>16 witness not to answer which counsel were present</p> <p>17 during the discussions?</p> <p>18 MR. DIRENFELD: I will allow the witness to</p> <p>19 answer only to the extent of identifying which</p> <p>20 counsel was present, similar to a privilege log.</p> <p>21 So you may answer -- you may answer, Dave,</p> <p>22 who was present.</p> <p>23 A. Bob Sahr and Mark Foss.</p> <p>24 Q. (BY MR. JASILLI) Was there any counsel</p> <p>25 present for any of the Class A members?</p>
<p style="text-align: right;">91</p> <p>1 reservation.</p> <p>2 MR. DIRENFELD: Yeah.</p> <p>3 Q. (BY MR. JASILLI) Was the board's reasoning</p> <p>4 for the opinions contained in this resolution ever</p> <p>5 shared with Basin's Class A members?</p> <p>6 MR. DIRENFELD: Objection. I'll also --</p> <p>7 objection to the extent that any -- any materials</p> <p>8 were exchanged under joint defense agreements.</p> <p>9 MR. ORR: Same objection.</p> <p>10 A. I believe the -- the basis for the</p> <p>11 conclusions is in the all-requirements -- in the</p> <p>12 words of the all-requirements contract and the</p> <p>13 bylaws, and I do believe there have been discussions</p> <p>14 with members on the words in those contracts.</p> <p>15 Q. (BY MR. JASILLI) Did you ever discuss --</p> <p>16 let me rephrase that.</p> <p>17 Did Basin ever discuss with any Class A</p> <p>18 member the specific advice from its counsel regarding</p> <p>19 the meaning of those words in the bylaws and</p> <p>20 wholesale power contracts?</p> <p>21 MR. DIRENFELD: Same objection to the extent</p> <p>22 that those conversations occurred pursuant to joint</p> <p>23 defense agreements.</p> <p>24 MR. ORR: Yes, I'll concur in that</p> <p>25 objection. To the extent any of those</p>	<p style="text-align: right;">93</p> <p>1 MR. ORR: Just a clarification. Bob Sahr is</p> <p>2 counsel for East River, which is a Class A member.</p> <p>3 A. I'm not aware of a general discussion with</p> <p>4 the entire membership. It was more one-on-one.</p> <p>5 Q. (BY MR. JASILLI) So which members did Basin</p> <p>6 have one-on-one conversations with?</p> <p>7 MR. DIRENFELD: Objection. Again, beyond</p> <p>8 the scope of identifying who, I'm going to instruct</p> <p>9 the witness not to answer about any -- any details</p> <p>10 the conversations covered under a joint defense</p> <p>11 agreement relating to privileged communications.</p> <p>12 THE WITNESS: So I'm supposed to answer the</p> <p>13 question?</p> <p>14 MR. DIRENFELD: Dave, you can answer who.</p> <p>15 Do not reveal the contents of any conversations.</p> <p>16 THE WITNESS: Okay.</p> <p>17 A. With East River and Upper Missouri</p> <p>18 specifically.</p> <p>19 Q. (BY MR. JASILLI) So Basin did not have</p> <p>20 discussions about the underlying reasoning for the</p> <p>21 opinions in the resolution with any of its members</p> <p>22 other than Upper Missouri and East River?</p> <p>23 A. Not that I participated in.</p> <p>24 Q. What about conversations that you didn't</p> <p>25 participate in?</p>

WHEREAS, one of the Cooperative's Class A Members has received requests from two of the Cooperative's Class C Members for a price for those Class C Members to buy out of their all-requirements contracts with the Class A Member;

WHEREAS, the Cooperative also has received a request from one of its Class A Members for the process and parameters to calculate a price if that Class A Member was to buy out of its all-requirements contract with the Cooperative;

WHEREAS, the Cooperative has been advised by both its General Counsel and its outside counsel, Orrick, Herrington & Sutcliffe LLP, that the all-requirements contracts of both the Class A Members with the Cooperative and the Class C Members with the Class A Members do not contain any provision permitting the member to buy-out of its all-requirements contract with the Cooperative or the Class A Member, as applicable;

WHEREAS, as a result, neither the Cooperative nor any Class A Member has any obligation to develop, calculate or furnish any information required in connection with a buy out or otherwise permit any such member to buy-out of its all-requirements contract; and

WHEREAS, the Board of Directors has considered the request of the Class A Member and the advice of counsel and concluded that it is not in the best interests of the Cooperative or its membership to allow any buy out of any all-requirements contracts with the Cooperative or any of its Class A Members;

NOW, THEREFORE, BE IT RESOLVED, that the General Manager and CEO is hereby authorized and directed to furnish a copy of this resolution to all Class A Members of the Cooperative.